MONTANA LEGISLATIVE HISTORY

Chapter _____ ~~19~~ 2001

Bill H _____ S 85 Original bill & history ✓C

H. Committee on Judiciary		S. Committee on Judiciary	
Hearing Date(s) 2/1/01	✓C	Hearing Date(s) 1/9/01	✓C
3/22/01	✓C	1/10/01	✓C
_____	___C	_____	___C
_____	___C	_____	___C
Date Out ~~0~~ _____	___C		

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

1/04	Fiscal Note Signed		
1/04	Fiscal Note Printed		
1/17	Hearing		
1/17	Tabled in Committee		
2/23	Missed Deadline for General Bill Transmittal		

SB 85 Introduced by Tester *LC0009 Drafter: Lane*

Revise Jury Pool to Select from List of Licensed Drivers and Id Holders

4/14	Fiscal Note Needed		
12/13	Introduced		
12/14	Fiscal Note Requested		
1/03	First Reading		
1/03	Referred to Judiciary		
1/04	Fiscal Note Received		
1/05	Fiscal Note Signed		
1/05	Fiscal Note Printed		
1/09	Hearing		
1/10	Committee Executive Action--Bill Passed as Amended	7	2
1/10	Committee Report--Bill Passed as Amended		
1/13	2nd Reading Passed as Amended	34	10
1/15	3rd Reading Passed	39	11
	Transmitted to House		
2/01	Referred to Judiciary		
3/02	Hearing		
3/22	Tabled in Committee		
	Died in Standing Committee		

SB 86 Introduced by R. Holden *LC0033 Drafter: B. Campbell*

Prohibit Insurer from Authorizing Use on Nonoriginal Vehicle Repair Parts

12/13	Introduced		
1/03	First Reading		
1/03	Referred to Business and Labor		
1/16	Hearing		
1/18	Tabled in Committee		
2/23	Missed Deadline for General Bill Transmittal		

SB 87 Introduced by Waterman *LC0361 Drafter: Lane*

Clarify Role of Clerks of Justice Courts and City Courts

12/13	Introduced		
1/03	First Reading		
1/03	Referred to Judiciary		
1/05	Hearing		
1/05	Committee Executive Action--Bill Passed	8	0
1/05	Committee Report--Bill Passed		
1/06	2nd Reading Passed on Voice Vote	37	0
1/08	3rd Reading Passed	48	0
	Transmitted to House		
1/09	Referred to Local Government		
1/23	Hearing		
1/24	Committee Executive Action--Bill Concurred	18	0
1/24	Committee Report--Bill Concurred		
1/27	2nd Reading Concurred	92	7
1/29	3rd Reading Concurred	97	3

SENATE BILL NO. 85

INTRODUCED BY J. TESTER

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAW RELATING TO THE SELECTION OF TRIAL JURIES; PROVIDING THAT TRIAL JURORS MUST BE SELECTED FROM A LIST OF LICENSED DRIVERS AND HOLDERS OF MONTANA IDENTIFICATION CARDS; ELIMINATING THE REQUIREMENT THAT JURORS MUST BE REGISTERED ELECTORS; ELIMINATING THE REQUIREMENT THAT A JURY LIST BE PREPARED BY THE CHAIRMAN OF THE COUNTY COMMISSIONERS AND THE COUNTY CLERK AND RECORDER; AMENDING SECTIONS 2-6-109, 3-15-301, 3-15-303, 3-15-403, 3-15-404, 3-15-405, AND 46-17-202, MCA; AND REPEALING SECTIONS 3-15-401 AND 3-15-402, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Providing lists of licensed drivers and holders of Montana identification cards to clerks of district court -- jury selection purposes.** (1) On the second Monday of June of each year, the department shall submit to the clerk of the district court of each county a list, prepared from the department's databases of licensed drivers and holders of Montana identification cards, showing the name, address, and date of birth of all licensed drivers and holders of Montana identification cards authorized by 61-12-501 who are 18 years of age or older and whose address is in that county. The list must be compiled on a county-by-county basis and be further divided by the city of residence of the persons named on the list to enable the drawing of lists for city courts that are comprised of only those residents living within a city's jurisdiction. The list must be provided for the exclusive purpose of making a list of persons to serve as trial jurors for the ensuing year.

(2) The list submitted by the department under subsection (1) must be certified by the attorney general or the attorney general's designee.

(3) The department may not provide the social security or driver's license numbers of persons on the list for any purpose.

Section 2. Section 2-6-109, MCA, is amended to read:

"2-6-109. Prohibition on distribution or sale of mailing lists -- exceptions -- penalty. (1) Except as

provided in subsections (3) through (8), in order to protect the privacy of those who deal with state and local government:

(a) an agency may not distribute or sell for use as a mailing list any list of persons without first securing the permission of those on the list; and

(b) a list of persons prepared by the agency may not be used as a mailing list except by the agency or another agency without first securing the permission of those on the list.

(2) As used in this section, "agency" means any board, bureau, commission, department, division, authority, or officer of the state or a local government.

(3) [Except as provided in 30-9-403, this] This section does not prevent an individual from compiling a mailing list by examination of original documents or applications that are otherwise open to public inspection.

(4) This section does not apply to the lists of registered electors and the new voter lists provided for in 13-2-115 and 13-38-103, to lists of the names of employees governed by Title 39, chapter 31, or to lists of persons holding driver's licenses or Montana identification cards provided for under 61-5-126 or [section 1].

(5) This section does not prevent an agency from providing a list to persons providing prelicensing or continuing educational courses subject to state law or subject to Title 33, chapter 17.

(6) This section does not apply to the right of access to public records dealing with motor vehicle registration either by Montana law enforcement agencies or~~,~~ by purchase or otherwise~~, of public records dealing with motor vehicle registration~~.

(7) This section does not apply to a corporate information list developed by the secretary of state containing the name, address, registered agent, officers, and directors of business, nonprofit, religious, professional, and close corporations authorized to do business in this state.

(8) This section does not apply to the use by the public employees' retirement board of a mailing list of board-administered retirement system participants to send materials on behalf of a retiree organization formed for board-administered retirement system participants and with tax-exempt status under section 501(c)(4) of the Internal Revenue Code, as amended, for a fee determined by rules of the board, provided that the mailing list is not released to the organization.

(9) A person violating the provisions of subsection (1)(b) is guilty of a misdemeanor. (Bracketed language deleted July 1, 2001.)"

Section 3. Section 3-15-301, MCA, is amended to read:

"3-15-301. Who competent. ~~A~~ Except as provided in 3-15-303, a person is competent to act as a juror if ~~he~~ the person is: ~~a registered elector whose name appears on the most recent list of all registered electors, as prepared by the county registrar~~

(1) 18 years of age or older;

(2) a resident for at least 30 days of the state of Montana and of the city, town, or county in which the person is called for jury duty; and

(3) a citizen of the United States."

Section 4. Section 3-15-303, MCA, is amended to read:

"3-15-303. Who not competent. A person is not competent to act as juror if the person:

(1) ~~who~~ does not possess the qualifications prescribed by 3-15-301; ~~or~~

(2) ~~who~~ has been convicted of ~~malfeasance in office or any~~ a felony ~~or other high crime~~ and the person's full rights have not been restored by termination of state supervision; or

(3) has been adjudicated to be of unsound mind, unless restored to capacity as provided by law."

Section 5. Section 3-15-403, MCA, is amended to read:

"3-15-403. ~~Lists delivered to clerk~~ Jury list -- filing -- public inspection. (1) ~~A list of the names of the persons selected, showing the place of residence and other proper particulars regarding each of them, so far as those particulars can be conveniently ascertained, must be made out and signed by the officers or a majority of them. Within 15 days after the meeting, the~~ The jury list certified to the clerk of the district court under [section 1] must be ~~delivered by those officers to the clerk of the district court and~~ filed by the clerk in the clerk's office no later than 5 working days after the receipt of the list.

(2) A copy of the latest jury ~~list~~ lists filed under subsection (1) and compiled under 3-15-405(4) and a description of the approved computerized random selection process, if one is used, must be kept in the office of the clerk of court and be made available for public inspection during normal business hours.

~~(3) If the clerk of court is satisfied that a person whose name is drawn is deceased or mentally incompetent or has permanently moved from the county, the name of the person must be omitted from the jury list. The reason for the omission must be entered in the minutes of the court.~~"

Section 6. Section 3-15-404, MCA, is amended to read:

"3-15-404. Duty of jury commissioner -- jury box or computer database. (1) The clerk of court is the jury commissioner and may appoint a deputy pursuant to 7-4-2401.

(2) A county jury commissioner may by order establish the use of either a jury box, as provided in subsection (3), or a computer database, as provided in subsection (4), as the means for selecting jurors in the county.

(3) If a county uses a jury box for selection of jurors, the jury commissioner shall prepare and keep a jury box and contents as prescribed in this subsection. The number of each juror must be written, typed, or stamped on a slip of paper or other suitable material, identical in all respects to the slips used for the other numbers. The slips must be placed in a box of ample size to permit them to be thoroughly mixed. The box must be plainly marked "jury box". The slips may be used as often as necessary, except that none may be used that is in any manner defaced or disfigured or so marked that it may be recognized or distinguished from the others in the jury box except by the number on the slip. The box may contain only one slip for each number corresponding to the number before the name of each juror on the jury list prepared under the provisions of 3-15-405(4).

(4) If a county uses a computer database for selection of jurors, the jury commissioner shall cause the list of jurors prepared under the provisions of ~~3-15-402~~ 3-15-405(4) to be entered into a computerized database.

(5) A person's name may not appear on a jury list for more than one court during a 1-year term."

Section 7. Section 3-15-405, MCA, is amended to read:

"3-15-405. Notice to jurors -- omissions from list -- final list. (1) The clerk of court shall serve notice by mail on the persons ~~drawn as jurors~~ whose names appear on the jury list filed under 3-15-403(1) and require the persons to respond by mail as to their qualifications to serve as jurors. The clerk of court may attach to the notice a jury questionnaire and a form for an affidavit claiming an excuse from service provided for in 3-15-313. If a person fails to respond to the notice, the clerk shall certify the failure to the sheriff, who shall serve the notice personally on the person and make reasonable efforts to require the person to respond to the notice.

(2) The name of a person on the list filed under 3-15-403(1) must be omitted from the list by the

clerk of the district court if the clerk of the district court is satisfied that the person:

(a) is deceased;

(b) does not possess the qualifications prescribed by 3-15-301;

(c) is mentally incompetent;

(d) has been convicted of a felony and has not had full rights restored;

(e) has been permanently excluded from jury service under 3-15-313 or is otherwise excused from jury service under 3-15-313; or

(f) has permanently moved from the county.

(3) The reason for the omission of a person from the jury list under subsection (1) must be entered in the minutes of the court.

(4) Following the omissions required by subsection (2), the clerk of the district court shall compile a final list of all persons qualified to serve as trial jurors to be used when it is ordered that a trial jury be drawn and summoned."

Section 8. Section 46-17-202, MCA, is amended to read:

"46-17-202. Formation of trial jury for justices', municipal, and city courts. (1) At the time of preparing the district court jury list under 3-15-405(4), the ~~county commissioners and clerk and recorder~~ clerk of the district court shall prepare a jury list for each justice's, municipal, and city court within the county. Each list must consist of residents of the appropriate county, city, or town. The lists must be selected in any reasonable manner that ensures fairness, and each list must include a number of names sufficient to meet the annual jury requirements of the respective court. Additional lists may be prepared if required. The lists must be ~~filed~~ kept on file in the office of the clerk of the district court as provided in 3-15-403. The appropriate list must be posted in a public place in each county, city, or town, and the list must comprise the trial jury list for the ensuing year for the county, city, or town.

(2) Trial jurors must be summoned from the jury list by notifying each one orally that the person is summoned and of the time and place at which attendance is required."

NEW SECTION. **Section 9. Repealer.** Sections 3-15-401 and 3-15-402, MCA, are repealed.

NEW SECTION. **Section 10. Codification instruction.** [Section 1] is intended to be codified as an

integral part of Title 61, chapter 5, part 1, and the provisions of Title 61, chapter 5, part 1, apply to [section 1].

- END -

FISCAL NOTE

Bill #: SB0085 **Title:** Revise jury pool to select from list of licensed drivers and ID holders

Primary Sponsor: Jon Tester **Status:** As Introduced

Sponsor signature 1/4/00 Date

Chuck Swysgood, Budget Director 1/3/01 Date

Fiscal Summary

	FY2002 Difference	FY2003 Difference
Expenditures:		
General Fund	$7,320	$1,200
Revenue:	0	0
Net Impact on General Fund Balance:	**($7,320)**	**($1,200)**

Yes	No		Yes	No	
	X	Significant Local Gov. Impact	X		Technical Concerns
	X	Included in the Executive Budget		X	Significant Long-Term Impacts
	X	Dedicated Revenue Form Attached		X	Family Impact Form Attached

Fiscal Analysis

ASSUMPTIONS:

1. The driver licensing system database reflects the address with the zip code provided to the Department of Justice (DOJ), Motor Vehicle Division at the time the individual obtained their driver's license or identification card. These addresses are updated only when the individual notifies the division that they have moved. The division is unable to determine whether a particular address is within or without a city's or county's legal boundaries.

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2. Annual programming costs to compile the county lists by city, identifying name, address, and date of birth of each licensed driver and holder of a Montana identification card who is 18 years of age or older are estimated at $4,800 in FY 2002 only. It will be necessary to contract for programming with an outside vendor since DOJ programming staff are committed to completing the current backlog of more than 15,000 hours of programming to comply with existing mandates. Computer costs to complete the programming are estimated at $1,320 in FY 2002 only.
3. Cost to run the extract will be unknown until the first extract has occurred. Operating costs are estimated to increase by $1,200 a year for costs to electronically transfer the compiled lists.

FISCAL IMPACT:

	FY2002 Difference	FY2003 Difference
Expenditures:		
Operating Expenses	$7,320	$1,200
Funding:		
General Fund (01)	$7,320	$1,200
Net Impact to Fund Balance (Revenue minus Expenditure):		
General Fund (01)	($7,320)	($1,200)

TECHNICAL NOTES:

1. The driver's licenses issued by the division are valid for one to eight years and identification cards are valid for four years. The addresses on file in the driver license database are not always current since individuals do not always promptly change their name and/or address of record with the division.
2. The database may also include the names of individuals who are deceased since the division may not always be notified when an individual is deceased.
3. The driver license database does not include the county in which someone lives.
4. The division is not able to programmatically determine if an individual resides in a city if they have a post office box. Additionally, there may be discrepancies for those individuals who physically live in one county, but receive their mail from a city/town in an adjacent county. Additionally, some mail for citizens of Montana comes out of Canada, Idaho, Wyoming, and North and South Dakota.
5. The division has no process to identify whether an individual has a felony, is a US citizen, or how long they have been residing in Montana.
6. The hardware/software infrastructure requirements to distribute the database to each clerk of district court varies from county to county. Perhaps providing the extracted data to the court administration would expedite the transfer of this data to the district courts who may be able to better determine how to provide the information to each clerk of the district court.

HEARING ON SB 85

Sponsor: **SEN. JON TESTER, SD 45, BIG SANDY**

Proponents: **Hal Harper, as citizen**
Mary Phippen, Montana Association of Clerks of District Court
Al Smith, Montana Trial Lawyers Association
Bob Brown, Secretary of State

Opponents: **None**

Opening Statement by Sponsor:
SEN. JON TESTER, SD 45, BIG SANDY introduced SB 85 which dealt with revising the jury pool from electors to driver's license and Montana identification card holders. He said it would be a different way of doing business and expanded the pool quite significantly. He relayed that in his own district, people didn't vote because they didn't want to be included in the jury pool. The bill was straightforward and forthright. He said the Department of Justice was set to move forward on this measure. The Court Administrators were players and would do what needed to be done. The Clerks of Court provided some amendments that he concurred in because they made the bill more workable for them and the entire system.

Proponents' Testimony:
Hal Harper, testified as a citizen, to encourage a resolution to an old problem of the state. He noted that Montana was one of the few states that used registered voter lists to select juries. Other states used driver's license holders because it was a much bigger list and much more representative. He pointed out that the state's Clerk and Recorders and Clerk of District Courts had made an effort to work out the problems and that during the last decade, three bills had been introduced to try to address the problem that SB 85 would solve.

Mary Phippen, Montana Association of Clerks of District Court, presented written testimony and amendments in favor of SB 85, EXHIBIT(1).

Al Smith, Montana Trial Lawyers Association, said that one of our basic Constitutional Rights was the right to trial by peers, and that's why the MTLA supported SB 85. He said it allowed jury pools to expand and it was important for civic duty and to get more people participating in the jury process.

Bob Brown, Secretary of State, said that Clerks and Recorders around the state said they had been asked to remove people's names from the list of registered voters for fear of call to jury duty. He found that hard to imagine because serving on jury duty was an important duty and so was voting. He acknowledged that jury duty could be disruptive to personal lives and some people might not want to serve on jury duty, but that it was unfortunate. He felt that SB 85 was a good concept, and it would encourage in at least a small way for people to vote in the elections process.

Opponents' Testimony:

None

Questions from Committee Members and Responses:

CHAIRMAN LORENTS GROSFIELD asked if driver's licenses were used, would it eliminate looking at registered voters. **Mary Phippen, Montana Association of Clerks of District Court,** said yes.

CHAIRMAN GROSFIELD followed by asking how many people, especially senior citizens were registered voters who didn't have driver's licenses, and if SB 85 would eliminate the potentiality for some significant number of those people from serving on juries. **Ms. Phippen** replied that she didn't know the answer to that.

CHAIRMAN GROSFIELD re-referred to **SEN. TESTER. SEN. TESTER** said that was where the Montana ID kicked in; for those folks without sight and maybe some of the elderly who chose not to drive and didn't have a driver's license.

CHAIRMAN GROSFIELD asked how many people bothered getting a Montana ID. **SEN. TESTER** replied he didn't know those figures, but said the jury pool would expand significantly even without Montana ID holders.

CHAIRMAN GROSFIELD voiced concerned about those whose license expired, especially the elderly, and asked if they would know anything about the Montana ID, and realize they were no longer on jury duty. He suspected that without some kind of educational campaign accompanying this, they wouldn't know. **SEN. TESTER** acknowledged that was probably right. However, if they were proactive, they would get on the jury pool. He countered with saying that right now people were being proactive to stay off the jury pool by not voting.

SEN. JERRY O'NEIL asked if this bill created a jury list by driver's license and if it would go to the various courts in the

state or just for District Courts. **SEN. TESTER** replied that SB 85 created a jury list off driver's licenses and Montana IDs that would be distributed to the state's District Clerks of Court.

SEN O'NEIL followed by asking if it would also go to Justice Courts. **SEN. TESTER** said yes it would.

SEN. O'NEIL asked if all the lists would include the same people. **SEN. TESTER** said no because as the bill stated, if a person appeared on one list, they couldn't be on another. **Nancy Sweeney, Lewis and Clark County Clerk of District Courts,** also answered. She worked both on the amendments and the original bill and provided some information on the process. She said it was not a new addition for people to be on one jury list. Prior to this, the Clerk and Recorder would draw then send exclusive lists for the individual courts: City, Municipal, Coroners, and District. Once a list for one court was drawn, then those names were excluded from the next list to be drawn. This bill changed the system by removing the Clerk and Recorder. The initial list, consisting of licensed drivers and ID holders would come to Clerks of Court. From there they would draw a sufficient number of jurors for that panel for that year for City, Justice, and District court also. Once those names had been drawn, they would be excluded from the large list of licensed drivers and ID holders. Federal courts were not included in this bill, but they were taken care of by federal statutes that stated if an individual served on a jury anywhere else, they must be excluded from Federal Court. She said Clerks could make sure from the start that duplication in lower and district courts would not occur.

SEN. O'NEIL clarified that the large list wasn't designated as a jury list until further selection. **Ms. Sweeney** said the large list would be handled by Clerks of District Court as the jury commissioner.

SEN. STEVE DOHERTY asked if it would defeat the purpose of SB 85 if the jury lists not only included registered voters, but also licensed drivers. **SEN. TESTER** replied on the surface that would be fine, but he didn't know how those two agencies or those two lists interacted. It could create a bureaucratic nightmare. **Ms. Sweeney** also answered saying registered voters would still give up their Constitutional Right to vote to avoid spending a few days on a jury. If the lists merged, a myriad of technical problems with duplicate names would have to be eliminated without the benefit of same fields of information to identify separate individuals. Since SB 85 specifically stated social security numbers would not be used, there would be no reference. She suggested that the Secretary of State could do an advertising

campaign to let seniors know about getting an ID. She pointed out that many seniors were physically incapable of serving, but provisions allowed for them to serve if they wanted. She respectfully disagreed with the fiscal note that there would be no fiscal impact on the counties because not all licensed drivers were citizens of the U.S. Clerks had resisted these efforts in the past, but they were willing to put the extra effort and expense to ensure good jury panels.

SEN. DOHERTY suggested the jury lists could come from either the voter registration list **or** the driver' license list. **SEN. TESTER** said for the plan to work with the least amount of administrative costs, the bill would need to be kept as simple as possible. He said he didn't want to exclude anybody and thought it would be very easy, cost effective, and effective overall if the Secretary of State could alert people to the change.

SEN. MIKE HALLIGAN asked how the jurors were randomly selected after the lists of drivers and ID holders were combined. **Ms. Sweeney** responded that the Clerks of Court across the state had computer programs for that. She said the software was not uniform across the state. Uniformity would require the Supreme Court Administrators office to enhance the program. This bill also required that a description of the computer program used be kept. It would have to be a recognized random selection. In June 2000, the Court Administration Office unveiled a program for jury selection that could work hand in hand with this. It was not installed on most of the computer programs in Clerk of District Courts offices across the state.

SEN. HALLIGAN said given the experience of the last election with respect to fairness issues and people's inability to vote because of not marking some things, the program was critical because of the Constitutional obligation to have a jury of peers. The Court Administration or somebody would have to deal with this statewide to have a system in place that was Constitutionally sound with random selection of jurors. He said he'd work on that.

SEN. AL BISHOP asked how many licensed drivers were in the state. **SEN. TESTER** said those numbers weren't given.

SEN. BISHOP wanted to know the number of registered voters/ electors because he was curious to see how many more bodies would be on the driver's license list than on the voter lists. **Anita Oppedahl, Chief of the Field Operations Bureau,** charged with issuance of driver's license and ID cards, said there were 690,000 licensed drivers in Montana.

Secretary of State Bob Brown said the state had both active and inactive registered voters, so the exact number of registered

voters was unknown. Registered voter lists were deceptive because many of those people had moved out of state. He said election jurisdictions in the counties could be polled to see how many active, registered voters were on the lists. He agreed his office could contact the senior's organizations and the Association of the Blind maybe on an annual basis to advise them to the change in the law. They would be reasonably informed to take it upon themselves to get an ID if they wanted to be considered for jury duty.

CHAIRMAN GROSFIELD said the fiscal note had a number of technical notes on it. Some of them were inherent of the current system, for example: how was a felon or deceased person identified. **Ms. Sweeney** replied that jury questionnaires went out to give the person the opportunity to claim they were not a felon, or they were a felon, that they were not a citizen of the state, that they were too medically infirm to serve. At that time the jury commissioner or the judge took those requests for excuses into consideration and excused them off the list. Currently, if people didn't reply to the questionnaire, a sheriff went to have them respond to the questionnaire and at that time they could again ask for excuse.

CHAIRMAN GROSFIELD clarified that **Ms. Sweeney** didn't see this as more burdensome than what they were already subjected to. **Ms. Sweeney** said yes, with the exception of having a section of non-citizens that would have to be excluded. She said they'd have to send out more jury questionnaires and there were some costs in that as well as the sheriff tracking them down. It would add a little, but it put the burden on the department. She said it may require the assistance of the Clerks and Recorders to make it work. Maybe use existing software until software was developed. It was their intent to be able to get assistance from whoever to make SB 85 work to its best capability.

Closing by Sponsor:

SEN. TESTER closed on SB 85, saying they tried to be inclusive in the process and he appreciated the comments from the Secretary of State and the comments and amendments by the Clerks of Court. He initially baulked at the effective date extending out a year, but thought it would be the right thing to do to make it right without mistakes.

HEARING ON SB 23

Sponsor: **SEN. MIKE HALLIGAN, SD 34, MISSOULA**

otherwise they cannot terminate due to the constitutional rights that were not protected all the way through.

EXECUTIVE ACTION ON SB 85

Motion: **SEN. GRIMES** moved **SB 85 BE AMENDED. EXHIBIT(5)** Amendments were handed out.

Discussion:

Valencia Lane, Legislative Staffer stated that this is the very same amendment requested by the clerks of district courts at the hearing and requesting that there be a delayed effective date and an applicability date and that is included in the number eight amendment, which is reflected in the gray bill in the title because it has to go within the title. The other changes are internal reference changes and basically they clarify the responsibility of the clerks of district court as to making these lists for all of the courts.

CHAIRMAN GROSFIELD asked if the effective date was October 1 and if there was any particular reason for that date. **Ms. Phippen, Clerk of District Court,** answered that there was not a particular reason for that. She said that since there was not an effective date on the bill, they thought that the effective date should be October 1, 2001 therefore the complete jury list provided by the department would have to be submitted on the second Monday of June 2002.

CHAIRMAN GROSFIELD asked if they were comfortable with the development of the technology taking place by October 1, 2002. **Valencia Lane** said that the attempt was to delay the effect by one year. She stated that if they make it effective sooner, so funds can be expended if needed, then the law has changed and you have to start preparing the jury list immediately from the drivers license list.

CHAIRMAN GROSFIELD said that they should not be stuck having to wait around until October 1, 2002 before they can do anything. **Valencia Lane** assumed they are already working on the computer programs with assistance from the court administrator's office.

Ms. Phippen mentioned that a few counties have a pilot program regarding jury selection, but it has not been integrated with the Department of Justice and the Motor Vehicle Registration and the I.D. bureau.

CHAIRMAN GROSFIELD said that this is a concern that they might have to check into.

SEN. JERRY O'NEIL asked if it is suggested they would change it back to 2003 rather than 2002. **CHAIRMAN GROSFIELD** said no and his concern was whether it ought to be 2001 due to developing the program, but not requiring them to implement the program between the effective date and the applicability date.

Vote: Motion **carried unanimously.**

SEN. GRIMES said that if he was subject to a jury trial or a family member, he would be concerned about the quality of the jury pool.

SEN. STEVE DOHERTY said that a far more practical point is a jury of peers and they are entitled to a jury of their peers. He mentioned that people do not want to go to jury duty so they do not register to vote.

SEN. GRIMES said there are some attendant duties and responsibilities that people assume and if they assume those, that qualifies them for participation.

SEN. O'NEIL said that it seems probable that a person does not want to register to vote because they do not want to be on a jury pool.

SEN. HALLIGAN asked how the clerks are soliciting the jurors currently. **Ms. Phippen** said the way that they were summoning jurors wasn't clear as a requirement to do by mail or phone call. She said that currently the summons is received by mail.

SEN. HALLIGAN asked if they referred to the list of registered voters. **Ms. Phippen** said there are two processes in providing a jury, one is to send out the questionnaire that informs them that they have been selected for a panel to serve for a year by mail and the second deals with determining how many jurors are requested to come in for any individual trial and it is done all over the state by mail.

{Tape 3; Side B}

SEN. HALLIGAN said that despite the fact that by expanding the pool to receive registered motor vehicle drivers and anyone who wants to show their identification may bring in all types of people.

Motion: **SEN. HALLIGAN** moved that **SB 85 DO PASS AS AMENDED.**

Discussion:

SEN. DOHERTY said that not all people, who register to vote, want to be called for jury duty. He felt that all responsible citizens should be eligible to serve on a jury. **SEN. GRIMES** added that it is an honor to serve on a jury duty and he thought that the Senate as a whole needs to vote on this issue.

SEN. HOLDEN said this bill forces people to participate when they do not want to and that is the last bunch of people he would want sitting on a jury when he has to go into a court room.

SEN O'NEIL asked if this bill would be unconstitutional because it requires people to pay money before they appear on a jury duty, drivers license has a fee and the registration cared requires a fee. **CHAIRMAN GROSFIELD** answered that this bill would require paying money before serving on a jury duty.

SEN. HALLIGAN mentioned that if a person simply does not get a drivers license they can get an identification card.

SEN. GRIMES said that they would have to trust the attorney to be able to screen the jurors well.

CHAIRMAN GROSFIELD asked if while questioning perspective jurors can an attorney ask a wide variety of questions related to the case and would it be a legitimate question to ask a juror if he/she is a registered voter. **SEN. DOHERTY** answered yes that would be a permissible question.

SEN. HALLIGAN said that an expanded pool of people should be required and it may help for the attorney or judge to ask questions to jurors to weed them out.

Vote: **Motion carried 7-2** with **SEN. HOLDEN and SEN. O'NEIL** voting no.

Executive Action: **SB 26 - Table**
SB 217 - Table

HEARING ON SB 85

Sponsor: **Sen. Jon Tester, SD 45, Big Sandy** said this Bill would expand the jury pool to Montana drivers' license holders and Montana ID holders. It offers the Department of Justice the opportunity to give the drivers' licenses and ID to the local entities or Clerk and Recorders to draw for juries.

There are a lot of people who don't vote because they don't want to serve on jury duty. They don't want to have their name in the pool. He personally thinks it's a civic duty to vote.

Proponents: **Bob Brown, Secretary of State.**

Al Smith, Montana Trial Lawyers' Association.

Opponents: **Marty Lambert, Gallatin County Attorney.**

Chris Miller, Powell County Attorney.

Brenda Nordlund, Department of Justice
EXHIBIT(juh48a01)

Nancy Sweeney, Lewis and Clark County Clerk of District Court.

Rep. Younkin stated, after Chairman Shockley ruled Ms. Sweeney an Opponent and not an Informational Witness, she would like the record to reflect the County Clerks of Court are, in fact, Informational Witnesses. Chairman Shockley said his opinion is, they are opponents because what they are saying has negative implications that require amendments to the Bill.

Questions from Committee Members and Responses: **Reps. Gallus, Laszloffy, Harris, Curtiss, Hurdle, Wolery, Clark, Gutsche, Peterson, Adams, Shockley, Noennig to Senator Tester, Ms. Sweeney, Mr. Lambert; Mr. Throssell, Montana Association of Clerk and Recorders.**

{Tape : 1; Side : A; Approx. Time Counter : 0 - 30.1}
{Tape : 1; Side : B; Approx. Time Counter : 0.1 - 27.3}
{Tape : 2; Side : A; Approx. Time Counter : 0.1 - 15.5}

Closing by Sponsor: Sen. Tester said the intent of this Bill is to expand the jury pool. Any problems that might arise can be workable through managing. The people who are voting are becoming more elderly and if we are going to have a jury of our peers, the Bill does offer more reasonableness, accuracy and better opportunity for a fair trial.

HEARING ON SB 204

Sponsor: Senator John Cobb, SD 25, Augusta said this Bill is another "tweaking" of the restitution laws. This Bill allows another option to collect restitution. It allows that once a court orders restitution that the restitution order can be collected in a civil proceeding, which means the victim can garnish the wages or have a sheriff's sale, and not have to wait to go through any other proceedings. Now when the court orders restitution, the offender is supposed to pay it and the court can order garnishment, sell property and the parole and probation of the prison can try to collect restitution. The court can also order the offender to go back to jail but that usually doesn't happen.

Proponents: Ellen Bush, Victims' Information Specialist for Department of Corrections and the Victims' Advisory Council. EXHIBIT(juh48a02)

Opponents: None

Questions from Committee Members and Responses: Reps. Peterson, Noennig to Senator Cobb.

{Tape : 2; Side : A; Approx. Time Counter : 15.5 - 29.8}

Closing by Sponsor: Senator Cobb closed the Hearing on SB 204.

HEARING ON SB 217

Sponsor: Senator John Cobb, SD 25, Augusta said this Bill clarifies that the defendant charged with a misdemeanor, for which the only possible penalty is a fine, may pay the fine by mailing or otherwise deliver the payment to the court. If there is a minimum/maximum fine that the defendant and the court can agree on, the fine can be mailed. This would be mostly traffic violations where there is no jail time, local government or municipality penalties. It is an option that the court can accept payment and it will constitute a plea of guilty.

Executive Action: **SJR 17 - BCIAA**
SB 229 - BCIAA
SB 384 - BCIAA
SB 132 - BCIAA
SB 283 - BCIAA
HB 637 - DPAA
SB 85 - Table
SB 342 - Table
SB 337 - Table

EXECUTIVE ACTION ON SB 85

Motion: **REP. ADAMS** moved that **SB 85 BE CONCURRED IN. #1**

Discussion: **Rep. Shockley** asked if anyone had amendments. **Rep. Curtiss** said she had an amendment and felt **Sen. Tester** would not be opposed to this amendment as it is procedural.

Motion/Vote: **REP. CURTISS** moved that **SB 85 BE AMENDED. #2 The motion carried unanimously 20-0.**

Motion: **REP. CLARK** moved that **SB 85 BE CONCURRED IN AS AMENDED. #3**

Discussion: **Rep. Peterson** said he believed the Bill was designed to not only increase the jury pool but to create a little more liberal jury pool and you do that by having more people who are drivers than opposed to just the electors. You get a little more conservative pool from just the electors.

Rep. Noennig said he thinks the idea behind the Bill has merit but he has a problem of not getting a cross-section. Juries are currently gleaned from voter lists and people are hesitant to register to vote because they don't want to serve on juries, so you single out senior-type people to serve on juries, which is fine but it isn't necessarily a good cross-section. We need to have both, voters and licensed drivers.

Reps. Adams, Curtiss, Gallus, Noennig to John MacMaster for clarification. Reps. Holden, Shockley, Hurdle, Peterson, Laszloffy cited personal opinions.

Motion/Vote: **REP. ADAMS** moved that **SB 85 BE TABLED. #4. Motion carried 11-9 with Reps. Clark, Eggers, Gallus, Gutsche, Harris, Hurdle, Mangan, Thomas and Wolery voting no.**

{Tape : 1; Side : A; Approx. Time Counter : 0 - 25}

EXECUTIVE ACTION ON HB 637

Motion: **REP. GUTSCHE** moved that **HB 637 DO PASS. #5**

Discussion: Rep. Newman asked the Committee to give favorable **consideration to the Bill with or without** the amendments.

Rep. Mangan said this is a much needed Bill. These programs work for youth court mediations.

Rep. Peterson said mediations are used almost universally now with great benefits. It should be a regular part of the judicial system.

Rep. Hurdle cited an example where the process was successful.

Motion: REP. CURTISS moved that **HB 637 BE AMENDED. #6**

Discussion: Rep. Gutsche explained the amendments **EXHIBIT(juh65a01)**

{Tape : 1; Side : B; Approx. Time Counter : 0.1 - 2.2}

Vote: The Curtiss amendment (#6) passed unanimously 20-0.

Motion: **REP. ADAMS** moved that **HB 637 DO PASS AS AMENDED. #7**

Discussion: Rep. Noennig; Rep. Rice asked Rep. Newman for clarification. Rep. Newman said this is just going to add an office in the Attorney General's office that will help promulgate information, train probation officers who will train policemen, train prosecutors and defense attorneys and will seek sources of money, both federal and private.

Vote: The Adams motion carried unanimously 20-0.

EXECUTIVE ACTION ON SB 283

Motion: **REP. YOUNKIN** moved that **SB 283 BE CONCURRED IN. #8**

Discussion: Reps. Gallus, Holden, Noennig, Curtiss, Gallus, Gutsche, Hurdle, Peterson.

Motion: **REP. CURTISS** moved that **SB 283 BE AMENDED. #9**